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09/939,938	08/27/2001	Kirsten Lambertsen	102964-2	4041

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EXAMINER

FOULADI SEMNANI, FARANAK

ART UNIT	PAPER NUMBER
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2672

DATE MAILED: 11/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/939,938

Applicant(s)

LAMBERTSEN, KIRSTEN

Examiner

Faranak Fouladi

Art Unit

2672

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. This action is responsive to communications: application, filed on 08/27/01; amendment A, filed on 09/21/03.
2. Claims 1-13 are pending in the case, with claims 1 and 6 being independent.
3. The present title of the application is "Virtual makeover system and method" (as originally filed).
4. **THIS ACTION IS MADE FINAL.**

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claim 1-5 are rejected under 35 U.S.C. 102(e) as being anticipated by Rigg US 6,293,284 B1.
7. As per independent claim 1, "a makeover method, such method comprising the steps of: configuring a computer to receive a facial image (applicant admitted prior art, specification page 3 lines 12-15; applicant has stated "One of ordinary skill in the art will readily appreciate that several different methods and systems exist for uploading and viewing images, and that all known methods and systems can be used with the present invention.");

providing user-adjustable feature templates allowing the user to specify features on the facial image (Rigg disclose in col. 1 line 37-40);

providing a catalog of beauty products enabling the user to specify particular products to apply to the specified features (Rigg disclose in col. 3 lines 6-10); and enabling a user to modify the image to form a made over facial image having the particular products applied to the specified features, thereby enabling the user to visualize an intended makeover (Rigg disclose in col. 3 lines 4-10).

8. As per dependent claim 2, "the method of claim 1, wherein the modified facial image shows the applied products in true color." Rigg disclose in col. 3 line 3. Rigg disclosed that the customer could provide input for her favorite color.

9. As per dependent claim 3, "the method of claim 1, wherein the facial image is an image of the user." Rigg disclose in col. 2 line 49-51.

10. As per dependent claim 4, "the method of claim 1, further comprising the step of storing the specified particular products as a palette for application to other or later images." Rigg disclose in col. 3 line 6-16. Rigg disclose a predetermined palette, which is made of the specified particular products of user's choice or consultant's choice. This predetermined palette is then applied to user's image. Predetermined means that the palette had to be chosen and saved before the virtual trial in order to be applied to the digital image.

11. As per dependent claim 5, "the method of claim 1, further comprising the step of storing the specified particular products in a shopping cart, and enabling the user to purchase the items in the shopping cart." Rigg disclose in col. 3 line 17-22.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by US 5,854,850 Linford et al.

13. As per independent claim 6, "a method for outlining features in a digital photographic image, comprising: receiving a digital photographic image from a user; providing a plurality of movable shapes for outlining features in the digital photographic image, each movable shape comprising a plurality of lines connected by a plurality of points which together form the shape; enabling the user to select a point on the movable shape; enabling the user to move each selected point to outline a specific feature in the digital photographic image and thereby moving each line connected to the point moved by the user so as to form a new shape; displaying each new shaped formed by the user in connection with the outlined features in the photographic image; enabling the user to save each new shape in connection with

the photographic image.” Linford disclose in col. 14 lines 34-60.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Linford as applied to claim 6 above, and further in view of Rigg US 6,293,284 B1 as applied to claim 1 above.

15. As per dependent claim 7, “the method of claim 6, further comprising: providing a product database of beauty products available for purchase, each beauty product being computer manipulable by the user such that specific beauty products can be applied to and displayed in connection with the outlined features of the photograph image; enabling the user to access the product database to apply beauty products to the outlined features of the photographic image; and enabling the user to select from the product database one or more beauty products available for purchase and to apply an image representative of the one or more products available for purchase in the photographic image.”

Linford disclose all the limitations set forth in claim 6 but Linford does not teach the rest of limitations set forth in claim 7. Riggs on the other hand disclose a

product database of beauty products that are computer manipulable by the user in connection with the outlined features of the photographic image; and he also disclose a barcode symbol or an image for designating the product with the customer and finally Rigg's software for operating the system is based on program disclosed by Linford. It would have been obvious to an ordinary person skilled in the art at the time of invention to use all the features of the Linford program to define the size and shape of the facial parts to enable the user to do the ultimate manipulation and enhancement to the digital image.

16. As per dependent claim 8, "the method of claim 7, further comprising: enabling the user adjust the application of the beauty product to the photographic image." Rigg disclose in col. 3 line 4.

17. As per dependent 9, "the method of claim 8, wherein the step of enabling the user to adjust the application of the beauty product to the photographic image comprises: enabling the user to select a desired width or opacity of the applied beauty product." Rigg disclose in col. 2 line 45-49. Rigg 's program does this by locating color requiring area and changing the shape and size of it to select the desirable width. Since Rigg's software is based on Linford's program this gives the user the ability to adjust the width of the applied product on the area.

18. As per dependent claim 10, "the method of claim 7, wherein the beauty products are selected from the group consisting of wigs, glasses, contacts, eye shadow, blush, eye liner, lipstick, lip liner, foundation, eye brow color, eye lashes, hair color, and combinations thereof." Since Rigg's software is based on Linford's program this gives

the user the ability to use and apply a wide variety of the beauty products including wigs or glasses on the user by using freehand draw mode, a curve mode and an undo mode, and also the combination draw tool used with any of the draw tools (Linford discloses in abstract).

19. As per dependent claim 11, "the method of claim 7, further comprising: enabling the user to search for a specific beauty product in the product database." Rigg disclose in abstract lines 10-14.

20. As per dependent claim 12, "the method of claim 7, further comprising: enabling the user to save the selected beauty products as a palette." Rigg disclose in abstract lines 12-14.

21. As per dependent 13, "the method of claim 12, further comprising: enabling the user to communicate the palette to other users." Rigg disclose in col. 3 lines 17-22.

### ***Response to Arguments***

22. Claim 1 is not rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,854,850 of Linford et al. There was a typo in item 15 of previous office action (paper # 3, mailed to applicant 06/09/03). Item 15 should read "Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by US 5,854,850 Linford et al." to be inconsistent with item number 16.

23. Applicant's arguments filed on 08/27/2003 have been fully considered but they are not persuasive.

Applicant argues on page 7 of amendment A in last paragraph *"Rigg does not teach or even suggest providing user-adjustable feature templates."* and *"Rigg also fails to teach or even suggest a method that allows a user to specify features on the facial image. Rather, the program, not the user, assigns color values, thus limiting any control the user may have over the application of makeup."*

Rigg disclose in col.1 line 37-40 a software to manipulate facial structures. A user needs to specify a feature first to manipulate it, and also the user can adjust the feature by manipulation.

Rigg disclose in col.2 line 59-63 identifying the natural skin color and accepting feedback from the customer thus giving customer control over application of the makeup.

Applicant argues on page 9 of amendment A in first paragraph *"Linford discloses a method for modifying a facial image - the method does not include the step of providing a plurality of movable shapes for outlining features on an image. Linford is specifically limited to the use of pen for drawing lines that are movable to modify a particular facial feature."*

Claim 6 claims "...each movable shape comprising a plurality of lines connected by a plurality of points which together form the shape; enabling the user to select a point on the movable shape; enabling the user to move each selected point to outline a specific feature in the digital photographic image and thereby moving each line connected to the point moved by the user so as to form a new shape..."

According to claim 6, each movable shape comprises a plurality of lines and user is able to move each line and this helps user to modify a feature shape to a new

shape. According to applicant himself (amendment A, first paragraph on page 9)  
Linford disclose the same in his invention.

### ***Conclusion***

**24. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Faranak Fouladi** whose telephone number is **703-305-3223**. The examiner can normally be reached on Mon-Fri from 8:00-4:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Michael Razavi** can be reach at **703-305-4713**.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, DC. 20231

**Or faxed to: 703-872-9314 (for Technology Center 2600 only)**

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,  
Arlington, VA, sixth-floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or  
proceeding should be directed to the Technology Center 2600 Customer Service  
Office whose telephone number is 703-305-4750.

**Faranak Fouladi-Semnani**  
**Patent Examiner**  
**Art Unit 2672**



**MICHAEL RAZAVI**  
**SUPERVISORY PATENT EXAMINER**  
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